IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 101 OF 2002.

Shri Harish Narayan Prabhu
Zantye, Chairman of Bicholim
Urban Co-operative Bank Ltd.,
Nandanvan, Bicholim. ... Applicant.

Versus

1. State
2. Shri Anand K. Shetye (expired)
   r/o Nagazonwada,
   Bicholim.
3. Shri Dileep V.S. Kenkre,
   r/o Avachitwado, Shirakawad,
   Bicholim.
4. Shri Arvind V. Chiktodi,
   r/o Khadapaband, Gulmohar
   Housing Society, Ponda. ... Respondents.

Mr. Arun Bras De Sa, Advocate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 1 State.

Mr. V.A. Lawande, Advocate for the Respondent No. 2.

Mr. S.D. Lotlikar, Senior Advocate with Mr. S.A. Samant Advocate for the Respondent No. 3.

Coram : P.V. HARDAS, J.

Date : 28th March 2003.

ORAL JUDGMENT.

This application under Section 482 of the Code of Criminal Procedure has been filed by the applicant/original complainant, being aggrieved by the Order of the learned Judicial Magistrate, First Class, Bicholim, dated 12th March 1999, dismissing the complaint filed by him, which Order has been confirmed by the Additional Sessions Judge, Panaji, in Criminal Revision Application No. 23 of 1999, by Judgment, dated

7th December 2001.

2. The applicant/complainant had filed a complaint under Sections 417, 418, 420, 465, 468, 469, 471 and 474 of the Indian Penal Code against the present non-applicants. The record and proceedings from the Court of the learned Judicial Magistrate, Bicholim, were called for. The Order sheet, dated 22nd November 1996, refers to the filing of the complaint case alongwith the list of documents and the wakalatnama. Thereafter, it appears that the learned Magistrate immediately fixed the case for police report. The case was fixed for 18th November 1997. The case was thereafter adjourned from time to time for police report. Thereafter, it appears that on 6th October 1997, a police report came to be filed. The Order sheet of 8th December 1997 indicates that the case was fixed for inquiry. Thereafter, immediately the case was fixed for passing orders and ultimately, the learned Judicial Magistrate, First Class, Bicholim, passed an Order on 12th March 1999, dismissing the complaint. The matter was carried in revision at the behest of the present applicant and the Additional Sessions Judge, Panaji, by Judgment, dated 7th December 2001, dismissed the revision and confirmed the Order of the learned Judicial Magistrate, First Class. In the proceedings before the learned Magistrate, admittedly, no verification statement of the

complainant was recorded.

3. Mr. Bras De Sa, the learned counsel appearing on behalf of the applicant/original complainant, has urged before me that the learned Judicial Magistrate, First Class, without recording the verification statement of the complainant had called for a police report.

4. Mr. Lotlikar, the learned senior counsel and Mr. Lawande, the learned counsel for the respondents/accused have urged before me that the learned Magistrate could ask for police investigation under Section 156(3) of the Code of Criminal Procedure and the learned Magistrate thereupon was competent to dismiss the complaint without the verification statement.

5. At the outset it must be stated that there is no order of the Magistrate directing investigation under Section 156(3) of the Code of Criminal Procedure. There is no order of the learned Magistrate calling for the police report. There is only a reference to the police report in the Order sheet. At this stage, therefore, it is difficult to come to a conclusion that the Magistrate had directed police investigation under Section 156(3). It appears that the learned Magistrate had called for

the police report under Section 202 of the Code of Criminal Procedure. This, the learned Magistrate was not competent to do without recording the verification statement of the complainant. The submission of Mr. Lotlikar, the learned senior counsel on behalf of the respondents/accused, therefore, cannot be accepted.

6. In view of this, the Order passed by the learned Magistrate dismissing the complaint and the Judgment of the learned Additional Sessions Judge confirming the said Order are unsustainable in law and deserve to be quashed and set aside.

7. In view of this, Criminal Miscellaneous Application is allowed. The Order and Judgment impugned in this application are, hereby, quashed and set aside. The matter is remitted to the learned Judicial Magistrate, First Class, who shall record the verification statement and take further steps thereafter in accordance with law. There shall be no order as to costs. Records and proceedings be remitted to the learned trial Court.

(P.V. HARDAS)
JUDGE.

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